

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

January 21, 2015

City Council Chambers

MEMBERS PRESENT: Leanne Cardoso, Linda Herbst, George Papandreas, and Bill Burton

MEMBERS ABSENT: Jim Shaffer

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Cardoso called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. 2015 LEADERSHIP ELECTION:

A. Papandreas moved to nominate Cardoso for Chair; seconded by Burton. Motion carried unanimously.

B. Papandreas moved to nominate Burton for Vice-Chair; seconded by Herbst. Motion carried unanimously.

III. MATTERS OF BUSINESS:

A. Minutes for the October 15, 2014 Hearing: Papandreas moved to approve as presented; seconded by Burton. Motion carried 3-0 with Herbst abstaining due to her not being a member of the Board until January 1, 2015.

B. Minutes for the December 14, 2014 hearing: Papandreas moved to approve as presented; seconded by Burton. Motion carried 3-0 with Herbst abstaining due to her not being a member of the Board until January 1, 2015.

IV. UNFINISHED BUSINESS: None

V. NEW BUSINESS:

A. CU14-12 / Dos Bros, LLC / 350 High Street: Request by Ahmad Abulaban, on behalf of Dos Bros, LLC, for an amendment to a previously approved conditional use petition for a "Restaurant, Private Club" located at 350 High Street; Tax Map 26A, Parcel 110; B-4, General Business District.

Fletcher presented the Staff report.

Cardoso recognized the petitioner Ahmad Abulaban of 350 High Street who concurred with the Staff report.

Burton asked if the establishment will keep the name as “Dos Bros”. Abulaban stated the name of the business would be changed to “Speedy’s 2” and “Dos Bros” will no longer exist.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request. There being none, Cardoso declared the public hearing closed and asked for Staff’s recommendations.

Fletcher noted there are no Findings of Facts are required to approve a transfer of beneficiary.

Papandreas moved to approve the amendment to the Board’s November 19, 2014 approval of CU14-12 thereby transferring the beneficiary of said conditional use approval from “Dos Bros, LLC” to “Speedy’s 2, LLC” as requested with Staff recommended conditions; seconded by Burton and carried unanimously.

NOTE: The following conditions were included in the motion.

1. *The Board approved the beneficiary assignment transfer of the November 19, 2014 conditional “Restaurant, Private Club” use granted under Case No. CU14-12 for “Dos Bros Cantina” located at 350 High Street on Parcel 110 of Tax Map 26A from “Dos Bros, LLC” to “Speedy’s 2, LLC”.*
2. *The Board included in this approval that “Speedy’s 2, LLC” and its managers, officers, employees, and agents shall comply with the conditions set forth by the Board in its November 19, 2014 approval of CU14-12, which are stated below.*
 - A. *That the petitioner must maintain compliance with all supplemental regulations set forth in Article 1331.06(27) of the Planning and Zoning Code.*
 - B. *That the petitioner must obtain permitting as a “restaurant” from the Monongalia County Health Department under the Monongalia County Clean Indoor Air Regulations.*
 - C. *To ensure that the petitioner’s business description and plans are executed as described and considered in granting the one-year “bona fide restaurant” waiver, the subject “Restaurant, Private Club” use must:*
 1. *Be open no later than 11:00 AM Monday through Friday for the purpose of serving lunch as described in the menu submitted with the petitioner’s conditional use application.*
 2. *That the petitioner shall voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a “Restaurant, Private Club” use to ensure compliance with Article 1331.06 (27) (e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.*
 3. *That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Division prior to building permit issuance for same.*
 4. *That the beneficiary of this conditional use approval is Speedy’s, LLC, which may not be transferred without prior approval of the Board of Zoning Appeals.*

Fletcher noted that changes to signage must be approved through the through the building permit process prior to installation.

Cardoso reminded Mr. Abulaban that the Board’s decision can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

- B. V15-01 / Games Galore / 40 High Street:** Request by Chris Hendershot, on behalf of Games Galore, for variance relief from Article 1369 as it relates to signage at 40 High Street; Tax Map 28, Parcel 75; B-4, General Business District.

Fletcher presented the Staff report.

Cardoso recognized David Herbest, on behalf of *Games Galore*, who stated the proposed sign would be smaller than the *Little Caesars* next door and would be comparable with neighboring signs.

Cardoso asked if the dimensions of the proposed sign are accurate. Herbest confirmed and stated the proposed sign has already been installed, but they are willing to have a new one created if the Board feels necessary.

Cardoso referred to the signage for *Mother India* and noted the proposed sign would be almost twice as tall as the neighboring sign.

Herbest referred to *Little Caesars* and stated their signage is much larger than what they are proposing. Burton noted that *Little Caesars* has more frontage and therefore would be allowed a bigger sign. Herbest referred to the drawings in the Staff Report to explain the store frontage for *Games Galore*.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request. There being none, Cardoso declared the public hearing closed and asked for Staff's recommendations.

Fletcher read the Staff recommendations.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-01 as presented; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The sign that Games Galore, LLC would like to permanently use will not adversely affect those conditions because the sign is neither obnoxious or disproportionate to its surroundings. In other words – it fits in with the rest of the plaza and surrounding High Street area. The sign is proportionate in size and is made of similar materials to our neighbors.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

A sign that would fit into the 9 square foot parameters called for by city zoning is unusually small for a store in a shopping plaza and simply not visible from the road.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The variance Games Galore is requesting will eliminate the hardship of multiple signs being created, designed, and paid for. The sign will allow the business more visibility and to experience more success in the City of Morgantown.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The variance, if approved, will allow for the intent of the zoning ordinance to be observed and justice done because it will allow a new business in the City to advertise its store front to potential customers within a reasonable way that fits in with the existing surroundings and conditions.

Papandreas moved to approve V15-01 as presented without conditions; seconded by Burton and carried unanimously.

Cardoso reminded Mr. Herbest that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- C. V15-02 / Suburban Lanes Plaza / 749 Chestnut Ridge Road:** Request by Samantha Wade of City Neon, Inc., on behalf of Jerry Lorenze, for variance relief from Article 1369 as it relates to signage at 749 Chestnut Ridge Road; Tax Map 56, Parcel 3; B-2, Service Business District.

Fletcher presented the Staff Report.

Cardoso recognized the petitioner's representative, Rudy Hoffert of City Neon, who stated additional signage is desired to allow for tenants to advertise along the road. The proposed sign will be approximately the same size as the former illegal sign that has sat at the location for over 20 years. The sign will sit at the same position for visibility purposes, and there is a possibility the entrance will become a one way access as there is a traffic light for exiting.

Papandrea asked why a monument style sign was not an option. Hoffert explained that the client did not request that type of sign but it would not be a problem to fill in the 2 foot area to create a monument sign style.

Burton noted that with a monument sign there would be limited visibility.

Burton asked if the sign would be narrower than the previous sign. Hoffert confirmed and stated the new sign would be slightly under 8 feet wide

Papandreas asked if the top part of the sign that says "Suburban Lanes" would be internally illuminated. Hoffert stated that only the six panels would be internally illuminated and the top portion of the sign would include vinyl reflective lettering.

Burton asked if other variances had been granted in the surrounding area. Fletcher stated there have been one or two variances granted previously in the surrounding area.

There being no further comments or questions by the Board, Cardoso asked if anyone was present to speak in favor of or in opposition to the request. There being none, Cardoso declared the public hearing closed and asked for Staff's recommendations.

Fletcher read the Staff recommendations.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V15-02 as amended by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

Other business establishments in Morgantown have existing multi-tenant post-and-panel style signs that exceed the maximum height and area standards and are internally illuminated, which provide the type of visibility to the public for which the petitioner seek to emulate and enjoy.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

It appears that the auto-dependent nature of the development and the commercial uses require enough sign area and illumination for existing and future tenants of the existing shopping plaza. It appears that, given the number of tenants within the multi-tenant development, a monument sign that meets the maximum area and height standards would not permit a functional directory sign that can be legible from visitors arriving to the site by vehicle.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The sign appears to be relatively consistent with other shopping plazas throughout Morgantown, including Earl Core Road, Patteson Drive, and Van Voorhis Drive commercial corridors.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The sign should help promote business for the tenants and the community. The addition of the sign should serve to increase the market interest in the development and economic activity for existing and future tenants give the heavily auto-dependent nature of the development.

Burton moved to grant the following variance relief for V15-02 with conditions:

- a. To permit a post-and-panel type directory sign rather than a monument type directory sign.
- b. To exceed the maximum area standard by 17 square feet.
- c. To exceed the maximum height standard by 2.83 feet.
- d. To permit internal illumination.

The motion was seconded by Papandreas and carried unanimously.

NOTE: The following conditions was included in the motion.

To safeguard a clear site line for motorists exiting the subject site, the proposed ground sign must be situated in the approximate location of the previous ground sign, in terms of perpendicularity to the adjacent roadway, and may not be located closer than nine (9) feet measured from the front face of the adjacent curb.

Cardoso reminded Mr. Hoffert that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

VI. ANNOUNCEMENTS: None

VII. ADJOURNMENT: 6:59 PM

MINUTES APPROVED:

February 18, 2015

BOARD SECRETARY:


Christopher M. Fletcher, AICP